

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

SW DESIGN SCHOOL, LLC, d/b/a
INTERNS4HIRE.COM AND d/b/a K12CODERS,
AND SW DESIGN SCHOOL, L3C, A SINGLE-
INTEGRATED BUSINESS ENTERPRISE AND/OR
EMPLOYER

and

Case 5-CA-243576

MATTHEW HYSON, AN INDIVIDUAL

Paul J. Veneziano, Esq., for the General Counsel
Tarsha Weary, Pro Se, for the Respondents

DECISION

STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. This case was tried in Washington, D.C. on February 24-25 and March 4-5, 2020. The complaint alleges several unfair labor practice violations of Section 8(a)(1) of the National Labor Relations Act (the Act)¹ by the Respondent, an alleged single integrated business comprised of several entities – SW Design School, LLC, d/b/a Interns4Hire.com, K-12 Coders, and SW Design School, L3C. First, the Respondent allegedly prohibited employees on April 30, 2019² from discussing compensation with each other, and promulgated and maintained a rule to that effect that day and continuously thereafter. Secondly, the Respondent allegedly violated Section 8(a)(1) by discharging employee Matthew Hyson on May 16, 2019 because he violated the aforementioned rule by engaging in protected concerted conduct relating to wages and reimbursement for work-related travel.

The Respondent denies all of the material allegations, including the assertion that it operates as a single-integrated business enterprise and/or employer, and allege: (1) that the allegedly coercive statements were made by another employee who was not a supervisor; (2) Hyson was not an employee at the time that he was discharged; (3) Hyson was never an employee of K-12 Coders; and (4) in any event, Hyson sought to be discharged and was discharged after one week of employment because he was late every day that week and stole the Respondent's equipment.

On the entire record, including my observation of the witnesses' demeanor, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

¹ 29 U.S.C. §§ 143-159.

² All dates are 2019 unless otherwise indicated.

FINDINGS OF FACT

I. JURISDICTION

SW Design School, LLC, a limited liability company with places of business in Southfield, Michigan and Capitol Heights, Maryland, operates a for-profit web and graphic design online distance vocational school. Interns4Hire.com, a limited liability company with a place of business in Capitol Heights, Maryland, provides web and graphic design services to the public, including through after-school programs coordinated by K-12 Coders at Washington, D.C. schools. K-12 Coders, a limited liability company with a place of business in Washington, D.C., operates web and graphic design after-school programs at Washington, D.C. schools.

As explained by the Respondent's operations below, the aforementioned entities constitute a single-integrated business enterprise and single employer within the meaning of the Act based on the following: their affiliated business enterprises with common officers, ownership, directors, management, and supervision; their formulation and administration of a common labor policy; sharing of common premises and facilities; providing services for and making sales to each other; interchanging personnel; interrelated operations with common sales and purchasing; and holding themselves out to the public as a single-integrated business enterprise.

During the 12-month period ending October 31, 2019, the Respondent purchased and received at its Washington, D.C. facility goods valued in excess of \$5,000 directly from points outside Washington, D.C. and conducted business operations described above in Washington, D.C., and the Board asserts plenary jurisdiction over enterprises in Washington, D.C.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Respondent's Operations

In 2014, Tarsha Weary created SW Design School, LLC in Michigan as an online school specializing in business development. That company changed in 2015 to a low-profit limited liability company, also known as an L3C. Until February 2020, SW Design School, L3C operated a website at www.thecareerleaders.co.

In 2015, Weary incorporated a separate limited liability company, also named SW Design School, LLC, in Maryland as an online vocational school specializing in graphic and web-design services. In 2016, that company began doing business as Interns4Hire.com at 201 Ritchie Road in Capitol Heights, Maryland (the Capitol Heights office). Interns4Hire currently participates in Maryland's apprenticeship program for computer programming and graphic design. That company uses a form on the www.thecareerleaders.com website to process apprenticeship applications. Interns4Hire also hires individuals and places them at Interns4Hire client locations.

In January 2019, Weary incorporated SW Design School, LLC in Washington, D.C. She then created, transferred assets to, and did business through, K-12 Coders for the operation of an

after-school program teaching entrepreneurial skills to kindergarten through 12th grade students. In August, K-12 Coders leased space at 833 Kennedy Street, NW, in Washington, D.C.³

The SW Design School, LLC is no longer licensed in Michigan. However, it shares a tax identification number with K-12 Coders, which now operates the www.thecareerleaders.com website. K-12 Coders also maintains and operates a website at www.k-12coders.com. Weary makes all of the business decisions for K-12 Coders and Interns4Hire. She is the only employee of K-12 Coders and hires all of Interns4Hire's employees.

B. The Respondent's After-School Programs

Since at least February, the Respondent has operated after-school programs in Washington, D.C.-area elementary schools. The programs teach children skills like coding and entrepreneurship using soap and candle-making equipment, computers, iPad programs, as well as a piece of machinery called a cricut. The Respondent owned four or five cricut machines. A cricut contains a moveable head with two casings. One casing holds a pen that enables the user to draw designs using a connected computer. The other holds a blade that permits a user to cut vinyl designs. With these tools, schoolchildren created T-shirts, hats, backpacks, cups and other items. One of the machines had been missing a blade prior to February.⁴

Applicants hired by the Respondent were required to complete a period of unpaid training. The first part consisted of one week of instruction in the Capitol Heights office. The second part consisted of several weeks of unpaid shadowing of employees at a job sites. Weary assigned employees to job sites once their training was completed.

Weary began placing employees at the after-school program locations in Washington, D.C. in early 2019. The Respondent pays its employees with government funding to work at those sites. Employees were required to review, sign, and follow the rules in the K-12 Coders employee handbook. During training, Weary read its provisions aloud to the employees. Among other things, the handbook prohibited them from discussing wages and working conditions with each other. It also required employees to wear K-12 Coders tee shirts.⁵

The Respondent pays its employees on an hourly basis and uses a smartphone application (app) known as "When I Work" to track employee attendance. That smartphone app enables employees to clock-in and clock-out when they are physically present at the Capitol Heights

³ GC Exh. 8.

⁴ This finding is based on Stacy Walker's credible and undisputed testimony. (Tr. 404-05.)

⁵ After receiving the initial charge and referencing an excerpt of the K-12 Coders employee handbook in her June 24 position statement, Weary deliberately destroyed copies of the handbook after an attorney "advised [her] to destroy any documents." In any event, Weary essentially confirmed the credible testimony of Stacey Walker and Hyson that the handbook provisions were read to employees and they had to acknowledge receipt of the handbook in writing. (Tr. 129-34, 192-94, 252-53, 385-87, 391, 419-23, 441, 455-56; GC Exh. 21 at 2; GC Exh. 23 at 5-6.)

office or after-school program job sites. Repeated “glitches” with the app, however, often impeded employees from clocking in or clocking out.⁶

Employees typically visit the Capitol Heights facility for training and to pick up supplies for the after-school programs. They clock-out when they leave Capital Heights and clock-in again at the job site. The Respondent considers that travel time as its employees’ lunchbreak period and, as a result, they are not compensated for transportation costs.⁷

By March, the Respondent was operating afterschool programs at Eastern High School, Boone Elementary and Navel Thomas Elementary in Washington, D.C. At some point, the cricut machine that was missing a blade had been transported to Boone Elementary. Without the blade, employees were unable to operate the cricut station.

C. Hyson’s Experience With the Respondent

Hyson, an experienced graphic designer, applied for a www.caecareerleaders.com apprenticeship in January. After interviewing Hyson and determining that he was overqualified for the program, Weary hired him on February 17 as a STEM Aide at \$18 per hour.⁸ Hyson started training as an unpaid Interns4Hire employee at the Capital Heights office on February 25. He was trained to use the cricut machine, which he used to make his K-12 Coders work tee shirt. Weary required Hyson to sign a copy of the employee handbook and informed him that employees were responsible for their own transportation between work locations.⁹

On March 4, Hyson was assigned to Eastern High School for an additional week of unpaid training. There, he job shadowed K-12 Coders employees, including Stacey Walker, teaching coding, entrepreneurship and graphic design. At the end of that week, Weary informed Hyson that he completed his training and could begin paid work on April 1. However, Hyson asked Weary to delay his start date because he was recently offered a temporary position with Johns Hopkins University. Weary agreed to hold Hyson’s position for a month.¹⁰

On April 26, Hyson informed Weary that he completed his assignment with Johns Hopkins University and was ready to start working. Weary replied that she could not put him on the schedule yet because she needed identification, health, drug testing and security background

⁶ Weary denied that employees encountered problems clocking in. However, I credit Hyson’s testimony to the contrary, which was corroborated by Stacey Walker’s credible explanation that “everyone had issues with maybe clocking in and then clocking out. It was a new app that was being tried out. So of course trying out something new, it has its glitches.” (Tr. 385-86.)

⁷ Stacey Walker credibly testified that the policy was spurred by the Respondent’s desire to minimize its liability exposure for employees’ on-the-clock travel. (Tr. 394.)

⁸ GC Exh. 27-30.

⁹ The Respondent’s position statement confirmed Hyson’s testimony that he was required to agree to K-12 Coders’ employee handbook policies. (GC Exh. 23 at 4-5; Tr. 244.)

¹⁰ Weary’s assertion that she initially considered terminating the relationship because Hyson was habitually late was not credible. There is no reference to his attendance as a concern in the documented record. To the contrary, Stacey Walker credibly testified that “we was all glad to see that he was back.” (Tr. 225-29, 246-49, 305-06; GC Exh. 23 at 16.)

documentation before clearing him to work with school children. She added that there had been many changes over the past 30 days and the Respondent was now servicing three schools. Weary gave Hyson a May 1 start date and added him to the roster but he could not start work at the schools until his background check cleared.¹¹

Hyson reported to the Capital Heights facility before being cleared to start on April 30. He met with Stacey Walker, who informed Hyson that she had been promoted.¹² After congratulating Stacy Walker, he asked whether she received a raise but she declined because the Respondent's employment policy prohibited employees from discussing wages with each other. Hyson replied that he knew from personal experience that such a policy was unlawful. He explained that a previous employer withdrew a similar rule after that he researched the Act and told the employer that the policy violated the Act. Hyson then emailed the article to Stacey Walker but she told him to discuss the policy with Weary. That same day, Stacey Walker informed Weary that Hyson asked about her wages and emailed her the article.¹³

On May 2 and May 3, Hyson asked Weary if it would be okay to get his paperwork done in Washington rather than the Capital Heights facility. Weary told him that was fine but to let Stacey Walker know because Weary no longer handled that function.¹⁴ By May 11, Hyson provided Stacey Walker with the remaining paperwork and he was assigned to Boone Elementary as Center Director on May 13. However, when he reported to the Capitol Heights office on May 13, Hyson was unable to clock-in with the attendance app. He informed Stacey Walker, she remedied the problem and Hyson clocked-in.¹⁵

Hyson worked with E'Amanda Walker and Niema Fields at Boone Elementary. Since neither had transportation, they asked him for a ride to the site each day. When Weary arrived at the Capital Heights office, Hyson asked if he could be compensated for travel time because he was transporting E'Amanda Walker and Fields to the job site. He expressed concern about the liability presented while driving between Capital Heights and job sites. Hyson cited an incident in which his wife was involved in a vehicular accident while working and encountered problems receiving worker's compensation benefits. Weary stated that Hyson would not be reimbursed for

¹¹ Hyson testified that his new title as STEM Aide supervisor included overseeing attendance and making sure other employees had the necessary equipment. The Respondent does not argue, however, that the nature of his additional duties transformed him into a statutory supervisor under Section 2(11) of the Act. (Tr. 379-80.)

¹² Stacey Walker was hired as a STEM Aide on February 18. She was promoted to STEM Aide supervisor in April and given responsibility for attendance and scheduling employees. In May, the Respondent granted Stacey Walker authority to hire, discipline and recommend the termination of employees. (Tr. 16, 379-83, 416-17.) In addition, Stacey Walker served as point person for the "When I Work" smartphone application. (Tr. 257, 260, 264, 266, 272,-73, 277, 386.) Stacey Walker left the Respondent's employ in August. (Tr. 142.)

¹³ The Respondent does not dispute Stacey Walker's testimony regarding her discussion with Weary. (Tr. 228, 248-55, 389-91, 393-95, 444-45; GC Exh. 23 at 5, 37 at 1, and 38-39.)

¹⁴ GC Exh. 23 at 14-15.

¹⁵ Hyson's credible testimony regarding these discussions with Stacey Walker was not disputed. (Tr. 256-60; GC Exh. 23 at 17.)

that expense because the ability to travel between locations was a condition of employment. She suggested, however, that he ask his coworkers to contribute toward his gasoline purchases.¹⁶

After Hyson and his Boone Elementary coworkers finished collecting supplies at the Capitol Heights office, they gathered bins, crates, and K-12 Coders backpacks for transport to Boone Elementary. The Respondent also stored supplies in the classroom, including a hotplate, robotic equipment and a cricut machine.¹⁷

Once children arrived, Hyson tried to use the cricut machine but noticed that the blade and cartridge were missing. He asked his E'Amanda Walker and Fields if they had seen the blade, but they had not. They told him, however, that there was an extra machine in the Capitol Heights office and suggested using the cartridge and blade from that machine until they located or replaced the corresponding pieces in the machine at Boone Elementary. For the rest of the day, Hyson worked with the design software at other stations.¹⁸

When Hyson arrived for work on May 14, he encountered difficulty clocking-in. Again, Hyson informed Stacey Walker about the problem. She told him that she would fix it and let Hyson know when he could clock-in. Hyson then opened a stored cricut machines and removed its blade cartridge and blade. After he removed the pieces, Hyson held them up and announced in the presence of those present, including Stacey Walker, E'Amanda Walker and Fields, that he was taking them to Boone Elementary. Hyson then placed the cartridge and blade in his pocket and continued collecting supplies for transport to Boone Elementary.¹⁹

Weary then arrived in the office and convened employees for a meeting. She reiterated the Respondent's policy requiring employees to have reliable transportation. In addition, Weary reiterated that the Respondent did not reimburse employees for travel costs. However, she encouraged employees to share the costs if a coworker provided them with transportation.²⁰

After Weary's announcement, Hyson and his Boone Elementary coworkers prepared to leave the Capitol Heights office. Just before loading the supplies in Hyson's car, Hyson took the cricut blade cartridge and blade out of his pocket and told E'Amanda Walker that he was putting the pieces in a side pocket of a backpack full of equipment that she was carrying to the school.²¹

When they arrived and set up in the classroom, however, the blade and cartridge were not in the backpack. Subsequent efforts by Hyson and his coworkers to find the pieces in the classroom and his vehicle were unsuccessful. Hyson told Fields and E'Amanda Walker that he would continue searching for the pieces but would, in any event, take responsibility for losing

¹⁶ Stacey Walker corroborated Hyson's testimony about his conversations with E'Amanda Walker and Fields. (Tr. 259-60, 333-37, 397-98.)

¹⁷ Weary acknowledged that she stored equipment at K-12 Coders sites. (Tr. 61-63, 260-62.)

¹⁸ This finding is based on Hyson's credible and unrefuted testimony. (Tr. 262-64.)

¹⁹ Stacey Walker testified that she did not hear Hyson say that he was taking the extra blade but was informed of his action by Amanda Walker and Fields. (Tr. 264-66, 406-07).

²⁰ Weary conceded that she urged employees to contribute to gasoline costs if they were given a ride to the job site. (Tr. 266-267, 394.)

²¹ E'Amanda Walker did not testify. However, Stacey Walker corroborated Hyson's testimony that Hyson made that statement to E'Amanda Walker (Tr. 267-69.)

them. Hyson also stated that he would let Weary know if he could not find them and would buy a replacement. E'Amanda Walker and Fields agreed.

At the end of the after-school program session, Hyson learned that he needed to return the Respondent's laptop computers to the Capitol Heights office to be charged. When Hyson arrived, the door was locked but the owner of the print shop with whom the Respondent shared the office eventually unlocked the door.

On May 15, Hyson could not clock-in when he arrived for work. He again informed Stacey Walker of the problem and she remedied the problem. Hyson explained the problem he encountered returning the laptops the previous evening and his concern that the policy required employees to travel between locations while off-the-clock. She responded that Weary had stated the travel pay policy many times and that employees' travel time between the Capitol Heights office and their job sites were to be considered lunch breaks. Hyson disagreed, stating that he could simply take his lunch break at the Capitol Heights office and that the Respondent was requiring Hyson to travel between work locations during his lunch break. Hyson was dissatisfied with that response and explained that he would continue researching the travel pay policy issue and let her know what he learned. Stacey Walker again informed Hyson that he should discuss the travel pay issues with Weary. She also later informed Weary about that conversation.²²

After Hyson's conversation with Stacey Walker, Hyson and his Boone Elementary co-workers gathered their supplies and packed Hyson's car to travel to the school. On the way there, E'Amanda Walker and Fields each gave Hyson \$20 in gas money for the week. Hyson thanked them and then stated that he did not believe it was fair for the Respondent to ask them to incur transportation costs because it was the Respondent's responsibility to reimburse employees for work-related travel. E'Amanda Walker and Fields responded with "mild disinterest."²³

At 7:30 p.m. on May 15, Stacey Walker text messaged Weary: "Just so you know . . . Matt lost your blade to the Cricut Machine." Weary replied by asking how he lost it. Stacy Walker explained that E'Amanda told her that "he had it in his pocket . . . then took it out . . . he told [E'Amanda] not to say anything until they found it . . . but she told him she was going to let you know." Weary replied, "Let him go."²⁴

On May 16, Hyson arrived to work and, once again, was unable to clock-in. He told Stacey Walker and she took care of it. When Weary arrived, she convened staff for a training session relating to use of projectors and a coding program. Stacey Walker led the training. Because Hyson already knew the skills Stacey Walker was teaching, he passed the time using his smartphone to access social media. Weary saw Hyson on his smartphone and asked if he was recording the meeting. Hyson stated that he was not. Weary replied that she did not consent to any recording, which would, in any event, be inadmissible in court.²⁵

²² Stacey Walker's testimony was generally consistent with Hyson's testimony that he told the two other employees that he would take responsibility for the blade. (Tr. 268-275, 392-94.)

²³ Stacy Walker corroborated Hyson's testimony, conceding that E'Amanda Walker and Fields told her and Weary later that day that he complained about the travel reimbursement policy and asked about their pay. (Tr. 276-77, 397-400, 403.)

²⁴ GC Exh. 1-I at 23.

²⁵ Weary did not dispute Hyson's testimony regarding these conversations. (Tr. 277-80, 407.)

After the training, Weary met separately with Hyson and Stacey Walker. She began by telling Hyson that she heard that he had been complaining about company policies. Specifically, Weary stated that Hyson should have brought any concerns to Weary because the employee handbook prohibited employees from discussing wages with each other. Although Hyson explained that the rule was illegal, Weary reiterated that Hyson gave up the right to discuss wages when he agreed to the handbook's provisions. Furthermore, Weary stated that Maryland was an at-will employment state and, as such, she could fire Hyson for any reason at any time. Weary then stated that she did not owe him an explanation and terminated him. During the hour long meeting, Weary also made a passing reference to the missing cricut machine blade – "I heard you stole from me." He denied the charge,²⁶ explaining that he took the cartridge and blade because the machine at Boone Elementary was already missing the blade. Weary pivoted to her belief that Hyson was untrustworthy because he "was discussing these things behind her back," which rendered him untrustworthy.²⁷

On June 18, Hyson filed the initial charge in this case. On June 24, Weary replied with position statement asserting²⁸, in pertinent part, the basis for Hyson's termination:

On January 30, 2019, Mr. Hyson completed an online application to enter Interns4Hire.com State Approved Apprenticeship program. After reviewing his application with the group of employers; no one had an opening for him. However, I decided to give him a chance.

On February 07, 2019, we connected and scheduled an online interview. I gave him an assignment and he did well. A job offer. was made on February 15, 2019. He accepted the offer and began training on February 25, 2019. It was NON-PAID training.

During that time, Mr. Hyson was scheduled to work at Eastern High School in DC. During training, he began to miss quite a few days. We were considering NOT continuing with the job offer due to so many missed days and projected missed days during training; however, the week before he was scheduled to start, he asked if he could take a leave from the job and take a month assignment with John Hopkins.

Since he had been communicating and we were going through the audit period of our program, I decided to give him the leave. On April 26, 2019, he sent an email stating that he was completing his assignment and wanted to come back. I was hesitating but allowed him to come back. Attendance was Mr. Hyson biggest problem in my company; however, I work with the hard-to-serve population and I'm willing give anyone a chance to prove themselves. Plus, he had the skills but no prior teaching experience. I was

²⁶ Weary's allegation was the first time that either she or Stacey Walker ever mentioned the missing cartridge and blade to Hyson. (Tr. 284-85.) Although Stacey Walker testified that she asked Hyson about the blade (Tr. 406-07.), her text message to Weary indicates that she did not learn about the missing blade cartridge until the evening of May 15, the night before Hyson was terminated. (GC Exh. 1-I at 23.)

²⁷ Weary did not dispute Hyson's testimony regarding these discussions. (Tr. 280-284, 407-409.)

²⁸ Position statements are admissible as opposing party statements pursuant to FRE 801(d)(2). See *Performance Friction Corp.*, 335 NLRB 1117, 1149 (2001).

willing to give him that experience to help further his career. Mr. Hyson was reoffered his job but at a lower position, STEM Aide which paid \$18 per hour, NOT the Center Director position which paid \$20 per hour. I believe this caused some type of disgruntle actions when he came back.

* * *

Due to his attendance issues, the attached statement from his supervisor, recording me during trainings and the fact that he continued to cause discord in our company; THAT is the reason his employment was terminated after only working four (4) days.

I have attached evidence proving my case and there is no need for an attorney because Maryland is an AT-WILL State. We document this in our employee handbook. Each candidate is given the employee handbook and must agree to the terms BEFORE employment. We place our employees with children. EVERYTHING that we do is for the protection of our youth between the ages of 6 years of age and 18 years of age.

Weary also attached a statement from Stacey Walker dated June 24:

My name is Stacey Walker. I am the K-12 Coders Stem Aide Supervisor. On May 16,2019, I was a witness to Mr. Matt Hyson's termination from Interns4Hire/K-12 Coders. Prior to Mr. Hyson's termination, He has consistently put me in uncomfortable situations such as pay inquiry, constant interruption in training, constantly criticizing the curriculum and the company policies. I informed Mr. Hyson on several occasions to speak with our manager Tarsha Weary if he had any questions or concerns regarding these matters. Mr. Hyson continued to try to engage conversations regarding legal processes and websites. I then told Mr. Hyson, if he has any concerns or questions regarding company policies to please contact Ms. Tarsha Weary as that is not my place to discuss those issues.

Mr. Hyson was informed on several occasions to contact Ms. Weary if he needed clarification on anything regarding the company. As a result, Mr. Hyson never contacted her on any of those concerns. Mr. Hyson continued to engage in conversation with other employees in regards to their pay. Mr. Hyson was not was not terminated for discriminatory reasons, but for reasons that violated the company policy which he agreed to sign and adhere to. In no way was he (Mr. Hyson) forced to sign anything that he wasn't in agreement with. Mr. Hyson had an understanding that discussing pay or anything that would make others feel uncomfortable was a violation to the company policy. Mr. Hyson was informed that I am not the person to discuss those issues of concerns therefore I refused to engage in those conversations with him. As a result, Mr. Hyson did not discuss these matters with our Manager Tarsha Weary until the meeting on May 16, 2019. If you need further information, feel free to contact me via email.²⁹

²⁹ GC Exhs. 17-18 and 23 at 1-5.

LEGAL ANALYSIS

I. THE RESPONDENT'S WAGE DISCUSSION POLICY

A. *Evaluating the Lawfulness of the Rule*

To assess an employer's rule, the *Boeing* standard requires a determination of whether a facially neutral rule, reasonably interpreted, would potentially interfere with the exercise of Section 7 rights. *The Boeing Company*, 365 NLRB 154 (2017) (establishing a new test to evaluate a facially neutral policy, rule or handbook provision that, when reasonably interpreted, would potentially interfere with NLRA rights). See also *Cott Beverages Inc.*, 369 NLRB 82 (2020) (policy prohibiting personal cell phones in work areas due to safety concerns lawful under *Boeing*); *LA Specialty Produce Company*, 368 NLRB 93 (2019) (confidentiality policies and certain media contact rules lawful under *Boeing*).

To determine the lawfulness of the Respondents' rule prohibiting employees from discussing their wages and working conditions with each other, an assessment of whether the no-wage discussion rule, when reasonably interpreted, would potentially interfere with the exercise of Section 7 rights must be conducted, and if so, an evaluation of (i) the nature and extent of the no-wage discussion rule's adverse impact on Section 7 rights, and (ii) the legitimate business justifications associated with the no-wage discussion rule. *Boeing*, 365 NLRB, slip op. at 14.

Interns4Hire employees working at K-12 Coders jobsites were required to review, sign, and adhere to the rules in the K-12 Coders employee handbook. The K-12 Coders employee handbook was also read aloud to Interns4Hire employees during training. That handbook included a wage discussion policy prohibiting Interns4Hire employees from discussing their wages and working conditions with each other.

B. *Interpreting the No-Wage Discussion Rule*

The Respondent's no-wage discussion rule, as interpreted by an objectively reasonable employee directly prohibits or interferes with the exercise of Section 7 rights. Preventing employees from disclosing the terms and conditions of their employment, such as wages, salaries, and promotions, with fellow employees is "information central to the exercise of Section 7 rights." See *LA Specialty Produce*, 368 NLRB, slip op. at 4. In this case, Hyson objected to the Respondent's policy and emailed a supervisor an article on the right to discuss pay at the workplace. This action indicates an employee interpreted the Respondent's no-wage discussion rule to directly interfere with the exercise of Section 7 rights.

In *Boeing* the Board adopted three categories for employment rules. *Boeing*, 365 NLRB, slip op. at 3-4. Category 3 included "rules that the Board will designate as unlawful to maintain because they would prohibit or limit NLRA-protected conduct, and the adverse impact on NLRA rights is not outweighed by justifications associated with the rule. An example of a Category 3 rule would be a rule that prohibits employees from discussing wages or benefits with one another." As such, the Respondent's rule prohibiting employees from discussing wages, in general, falls into the Category 3 types of rules that are per se unlawful as the rule directly prohibits or interferes with the exercise of Section 7 rights. *Boeing*, 365 NLRB, slip op. at 4.

C. The Adverse Impacts or Legitimate Business Justifications of the Rule

Since the Respondent's rule prohibiting employees from discussing wages is a type that the Board has designated as uniformly unlawful, there is no need to turn to the individualized balancing test articulated in *Boeing*. The Respondent's stated justification for refusing to reimburse employees for travel between work locations was justified as an effort to minimize its liability exposure. There was nothing unlawful about that decision. However, prohibiting employees from discussing wages, including reimbursement for work-related travel costs, was an unreasonable, unlawful effort by the Respondent to secure compliance and directly interfered with the exercise of Section 7 rights. See *Double Eagle Hotel & Casino*, 341 NLRB 112, 16 (2004) (no-wage discussion rule "on its face and on threat of discipline, expressly prohibiting the discussion of wages and other terms and conditions of employment, plainly infringes upon Section 7 rights and violates Section 8(a)(1)").

Based the record, the no-wage discussion rule significantly affects the exercise of Section 7 rights. The no-wage discussion rule provides no substantial and important business justifications as well. Accordingly, the Respondent's maintenance of its no-wage discussion rule constituted unlawful interference with protected rights in violation of Section 8(a)(1) of the Act. *Boeing*, 365 NLRB, slip op. at 4, 14.

II. HYSON'S DISCHARGE

A. The Applicable Standard

Under *Wright Line*, 251 NLRB 1083 (1980), enfd. on other grounds, 662 F.2d 899 (1st Cir.1981), the General Counsel has the initial burden of establishing that an employee's protected concerted activity was a motivating factor in an employer's decision to take adverse action against the employee. *Id.* at 1089. To support an inference of unfair labor practices in a mixed-motive case, the *Wright Line* standard requires "that the [General Counsel] make prima facie showing sufficient to support the inference that the protected conduct was a "motivating factor" in the employer's decision." *Id.* at 1083. A prima facie case requires a showing of preponderance of the evidence that: (1) Hyson was an employee of Interns4Hire; (2) Hyson engaged in protected concerted activity; (3) Hyson's employer was aware of the protected concerted activity via statements imputed by a supervisor; and (4) Hyson's protected concerted activity was a motivation for the decision to terminate Hyson. *Wright Line*, 251 NLRB 1083 (1980), enfd. on other grounds, 662 F.2d 899 (1st Cir.1981).

The Respondent contends: (1) that the allegedly coercive statements were made by another employee who was not a supervisor; (2) Hyson was not an employee at the time that he was discharged; (3) Hyson was never an employee of K12Coders; and (4) in any event, Hyson sought to be discharged and was discharged after one week of employment because he was late every day that week and stole the Respondent's equipment.

B. Employee Status

The Respondent alleges Hyson was not an employee at the time that he was discharged.

If Hyson is not an employee, then the Board lacks authority to address Hyson's grievance. See *NLRB v. Town & Country Electric, Inc.*, 516 U.S. 85, 89 (1995) (rights guaranteed by the Act "belong only to those workers who qualify as 'employees' as that term is defined in the Act"). In applying a broad definition of employee, it is necessary to consider the common law definition. See *SuperShuttle DFW, Inc.*, 367 NLRB 75, 258 (2019) (employee status based on "total factual ...in light of the pertinent common law principles"); *Town & Country Elec.*, 516 U.S. at 94 ("Board's interpretation of the term "employee" is consistent with the common law"). Under common law, an employee is a person who performs services for another under a contract of hire, subject to the other's control or right of control in return for payment. Cf. *Northwestern Univ. & Coll. Athletes Players Ass'n*, 362 NLRB 1350 (2015) (college athletes not considered employees). The common law employee framework is analyzed by assessing: (1) whether Hyson performed service for the benefit of the employer for which he received compensation, and (2) whether Hyson was subject to the employer's control. *Id.*

(1) Hyson performed services for the employer's benefit

Hyson performed services for the benefit of Interns4Hire and K-12 Coders for which he received compensation. As an experienced graphic designer, his services included using the circuit machine, and teaching coding, entrepreneurship and graphic design in a K-12 Coders after-school program at Boone Elementary. Because the Respondent began placing Interns4Hire employees at K-12 Coders' locations in early 2019, and received government workforce funding as a result, Hyson's work directly benefited Interns4Hire for work at K-12 Coders' locations. In return for Hyson's services, he received \$18 per hour in compensation. As such, Hyson performed services for the benefit of Interns4Hire and K-12 Coders for which he was compensated, satisfying the first prong of the common law employee analysis. Cf. *Amnesty International of the USA, Inc.*, 368 NLRB No. 112, slip op at 2 (2019) (unpaid interns did not receive or anticipate any economic compensation and therefore were not employees); *WBAI Pacifica Foundation*, 328 NLRB 1273, 1274-1276 (1999) (unpaid staff of nonprofit radio station were not employees).

(2) Hyson was subject to employer's control

Additionally, Hyson was subject to the control of Interns4Hire and K-12 Coders. Hyson attended a mandatory unpaid week of training at a K-12 Coders location prior to starting paid employment. The Respondent then placed Interns4Hire employees at K-12 Coders' locations subject to the K-12 Coders employee handbook provisions. In addition, the Respondent required employees to wear K-12 Coders tee shirts. Employees also had to visit the Interns4Hire Capitol Heights facility for training, to clock-in and to pick up supplies for the K-12 Coders programs. Finally, the Respondent tasked employees with responsibility for their own transportation between work locations. As a result, the location, duration and manner in which Hyson carried out his duties were controlled by Interns4Hire. The additional rules and restrictions Hyson was subject to indicate significant control over his duties with Interns4Hire. As such, Hyson was subject to Interns4Hire and K-12 Coders control, satisfying the second prong of the common law employee analysis and establishing his right to pursue a grievance against his employer. See *Northwestern Univ. & Coll. Athletes Players Ass'n*, 362 NLRB at 1363.

C. Supervisory Status

Although not alleged, an alternative defense looms based on the issue of whether Hyson is exempted from the protection of the Act because he was a statutory supervisor. Section 2(3) of the Act states that an employee “shall include any employee . . . but shall not include any individual . . . employed as a supervisor.” 29 U.S.C. § 152(3). Because the Act’s protections do not extend to supervisors, and Hyson stated his new title with Interns4Hire was STEM Aide supervisor, whether Hyson should be classified as a supervisor for purposes of the Act must be considered. See *NLRB v. Kentucky River Cmty. Care, Inc.*, 532 U.S. 706 (2001) (recognizing that nurses must be employees, not supervisors, to invoke rights under the Act).

Employees will be considered supervisors within the meaning of Section 2(11) based on their authority to assign and responsibly direct employees. See e.g., *Oakwood Healthcare*, 348 NLRB 686, 693 (2006) (refining the supervisory test and classifying charge nurses who exercised some, but not total, authority to be “supervisors”); cf. *Croft Metals, Inc.*, 348 NLRB 38 (2006) (employees classified as “leads” in a manufacturing plant, were not supervisors); *Golden Crest Healthcare Ctr.*, 348 NLRB 39 (2006) (charge nurses at a nursing home were not supervisors). In addition, an employee’s job title does not determine whether the employee is a supervisor. See *Frenchtown Acquisition Co. v. NLRB*, 683 F.3d 298, 305 (6th Cir. 2012), quoting *Jochims v. NLRB*, 480 F3d 1161, 1168 (D.C. Cir 2007) (“rules designating certain classes of jobs as always or never supervisory are generally inappropriate”).

(1) Hyson’s ability to assign

In this case, Hyson’s position as STEM Aide supervisor included overseeing attendance and making sure other employees had the necessary equipment. There is no evidence, however, that the nature of his additional duties transformed him into a statutory supervisor under Section 2(11) of the Act. There is little evidence Hyson’s assignment ability was “anything more than “routine,” i.e., it does not involve the exercise of independent judgment.” *Cook Inlet Tug & Barge, Inc.*, 362 NLRB 111, 1153 (2015) (tugboat captains were not supervisors because of routine work). Hyson did not assign employees to tasks at either Interns4Hire or K-12 Coders, rather he focused on collecting supplies at the Capitol Heights office, transported himself and coworkers to Boone Elementary, and primarily worked with school children teaching coding and software. Second, there is no evidence that Hyson was involved in setting the work schedules for employees. Instead the Respondent utilized the “When I Work” smartphone application to track employee attendance. Stacey Walker oversaw the “When I Work” function and assigned both Hyson and coworkers to a work schedule and location.

Accordingly, Hyson did not possess the asserted authority to assign and responsibly direct employees as a supervisor. See e.g., *Oakwood Healthcare*, 348 NLRB at 693.

(2) Hyson’s ability to direct

In addition, Hyson did not possess the supervisory authority to responsibly direct other employees. To show a supervisor responsibly directs other employees the supervisor must be accountable for the actions of those who report to them. See *Cook Inlet Tug & Barge, Inc.*, 362 NLRB, at 1153 (tugboat captains were not supervisors because of lack of responsibility).

Evidence of accountability would be demonstrated through adverse consequences imposed on a supervisor which flowed from other employees' errors. See *Oakwood Healthcare*, 348 NLRB at 691-92 (charge nurses responsible for hospital units errors classified as supervisors). Here, the Respondent offered no evidence indicating Hyson was held accountable with respect to his coworkers' conduct or performance. Rather, Hyson was not subject to discipline or lower evaluations when his coworkers failed to adequately perform their duties, such as providing their own transportation to Boone Elementary. As such, the functions performed by Hyson did not constitute authority responsibly direct other employees. Based on the foregoing, the record does not support a finding that Hyson was a supervisor under Section 2(11) because he does not have authority to assign and responsibly direct. *Id.* at 693.

D. Protected Concerted Activity

As an employee, Hyson was entitled to engage in protected concerted activity pursuant to the rights guaranteed by Section 7 of the Act. 29 U.S.C. § 157. Such activity includes the terms and conditions of employment, such as working hours, the physical environment, assignments, and responsibilities. *New River Indus., Inc. v. NLRB*, 945 F.2d 1290, 1294 (4th Cir. 1991) (analyzing how the Act characterizes protected concerted activity). Here, Hyson complained or inquired about wages and wage-related travel reimbursement policies, which encompass terms and conditions of employment protected by Section 7. However, the initial question is whether these complaints and inquiries were made in the context of concerted activity. See *Alstate Maintenance, LLC*, 367 NLRB 68 (2019).

Whether a particular action qualifies as "concerted" often hinges on the distinction between group and individual complaints. See *Alstate Maint.*, 367 NLRB, slip op. at 2 (employees' complaints about airline passengers tipping habits not concerted); *Fresh & Easy Neighborhood Market, Inc.*, 361 NLRB 151, 153 (2014) (determining whether action is concerted depends on whether the employee's actions can be linked to those of coworkers), citing *City Disposal Systems*, 465 U.S. 822, 831 (1984). The concept of "mutual aid or protection" focuses on the goal of the concerted activity, specifically, whether the employee involved seeks to improve conditions of employment. *Id.* at 153.

While protected concerted activity normally requires two or more employees to act together in joint action, a single employee's conduct can be "concerted" if it is engaged in "with or on the authority of other employees, and not solely by and on behalf of the employee himself." *Meyers Industries (Meyers I)*, 268 NLRB 493, 496 (1984). Examples of when a single employee's actions could be "concerted" include cases where individual employees "seek to initiate or to prepare for group action" or bring "truly group complaints to the attention of management." *Meyers Industries (Meyers II)*, 281 NLRB 882, 887 (1986). However, for individual employees to enjoy the protection of the Act, two elements must be satisfied: (1) the activity they engage in must be "concerted," and (2) the concerted activity must be engaged in "for the purpose of . . . mutual aid or protection." 29 U.S.C. § 157. See *Alstate Maint.*, 367 NLRB, slip op. at 2.

The Respondent alleges that it did not violate Section 8(a)(1) of the Act by discharging Hyson because Hyson sought to be discharged and was discharged after one week of employment because he was late every day that week and stole the Respondent's equipment.

That defense was not supported by the weight of the credible evidence. Assuming, arguendo, that he did want to be discharged, in a mixed motive case, the *Wright Line* standard still requires an assessment of whether Hyson engaged in protected concerted activity for the purpose of mutual aid or protection. 251 NLRB 1083 (1980). For the following reasons, Hyson's

5 comments about the wages of Stacey Walker and complaints about travel compensation was neither concerted activity nor undertaken for the purpose of mutual aid or protection.

(1) The nature of Hyson's activities

10 To determine whether an activity is concerted, *Meyers I* stated "[i]n general, to find an employee's activity to be 'concerted,' we shall require that it be engaged in with or on the authority of other employees, and not solely by and on behalf of the employee himself." 268 NLRB at 497. Concertedness "encompasses those circumstances where individual employees. . . bring truly group complaints to the attention of management." *Meyers II*, 281 NLRB at 886. As

15 such, an individual employee who raises a workplace concern with a supervisor is engaged in concerted activity if there is evidence of "group activities," such as a prior discussion of the concern among members of the workforce, suggesting an employee was bringing to management's attention a "truly group complaint," as opposed to a personal grievance. *Alstate Maint.*, 367 NLRB, slip op. at 3. Simply making an individual complaint or conversing with

20 others does not constitute concerted activity. *Id.*

The following factors support an inference that an employee's complaint is intended to induce group action and is "concerted": "(1) the statement is made in an employee meeting called by the employer to announce a decision affecting a term or condition of employment; (2)

25 the decision affects multiple employees attending the meeting; (3) the employee who speaks up in response to the announcement does so to protest or complain about the decision, not merely to ask questions about how the decision has been or will be implemented; (4) the speaker protests or complains about the decision's effect on the work force generally or some portion of the work force, not solely him or herself; and (5) the meeting was the first opportunity to address the

30 decision so that the speaker had no opportunity to discuss it with other employees beforehand." *Alstate Maint.*, 367 NLRB, slip op. at 7. Not all of these factors are required to support an inference of concerted activity, rather analysis is "based on the totality of the circumstances." *Id.*, slip op. at 5.

35 In this case, Hyson did not engage in concerted activity when he raised the travel pay policy and asked about the pay of supervisors and co-workers. Here, there was a single announcement on the Respondent's policy requiring employees to have reliable transportation, no announcement by management regarding wages or hours, and no protest from Hyson when the travel announcement was made. The totality of the circumstances does not support an

40 inference that Hyson was seeking to initiate or induce group action. Instead, there was a brief encounter between Hyson and his supervisor and a gripe about the travel policy.

With respect to Hyson's questioning the Respondent's travel compensation policies, Hyson was concerned about being reimbursed while other employees responded with "mild

45 disinterest." See e.g., *Bud's Woodfire Oven LLC d/b/a Ava's Pizzeria*, 368 NLRB No. 45, slip op. at 1, fn. 3 (2019) (employee lashed out at supervisor with intention to undermine him and not to advance the mutual aid and protection of coworkers).

Hyson expressed individual concern about the liability exposure presented while driving between Respondent's Capital Heights office and Boone Elementary. The facts indicate Hyson was the only employee with a car traveling to Boone Elementary and other employees were getting rides to their respective after school programs. The employees who traveled with Hyson each gave Hyson \$20 in gas money for the week, but there's no evidence of collective interest towards the Respondent's unpaid travel policy. The facts do not demonstrate that Hyson was seeking to initiate or induce group action regarding travel pay.

With respect to Hyson's comments on supervisors and co-workers pay, Hyson did not express an interest in his own wages but rather that of his supervisor. After Hyson was informed that Stacey Walker was promoted, he asked whether she received a raise. She declined to comment because the Respondent's employment policy prohibited employees from discussing wages with each other. Hyson's discussion on whether Stacey Walker received a raise when she was promoted occurred after the supervisor's change in job title and duties and removed her from employee status. As such, Hyson's initial conversation about wages and hours was not concerted action with another employee. During this conversation, Hyson replied that the Respondent's policy was unlawful, explained that a former employer applied a similar rule, and emailed the supervisor an article on the right to discuss pay at the workplace. Because these actions occurred with a supervisor instead of an employee, Hyson's actions did not amount to concerted activity. See *Bud's Woodfire Oven LLC*, 368 NLRB, slip op. at 6 (concerted activity did not "include ... employees' personal gripes directed at supervisors").

Stacey Walker later reported that coworkers told her that Hyson discussed the travel pay policy and asked about their pay. When Hyson discussed the travel pay policy his individual remarks were "simply an offhand gripe." *Alstate Maint.*, 367 NLRB, slip op. at 4, quoting *Mushroom Transp. Co. v. NLRB*, 330 F.2d 683, 685 (3d Cir. 1964) (defining "activity which consists of mere talk must" and "is an individual, not a concerted, activity, and, if it looks forward to no action at all, it is more than likely to be mere 'gripping.'"). Hyson's inquiry into his supervisors pay is not concerted activity with another employee and any inquiry into his coworkers pay did not amount to a group activity. Hyson's statements did not contemplate his own wages and looked forward to no action or group complaint. As such, Hyson did not engage in concerted activity. *Alstate Maint.*, 367 NLRB, slip op. at 3-4.

(2) Mutual aid or protection

To gain the protection under Section 7, activity must be both concerted and undertaken for the purpose of mutual aid or protection. 29 U.S.C. § 157; *Alstate Maint.*, 367 NLRB, slip op. at 8. Having found that Hyson did not engage in concerted activity, that portion of the analysis stops here. See *Meyers I*, 268 NLRB at 494 (the activities in question must be "concerted" before they can be "protected").

E. The Respondent Discharged Hyson in Violation of Section 8(a)(1) of the Act

Discipline imposed pursuant to an unlawfully overbroad employer policy violates the Act when an employee violates an employer's policy by (1) engaging in protected conduct or (2) engaging in conduct that otherwise implicates the concerns underlying Section 7 of the Act. *Continental Group, Inc.*, 357 NLRB No. 39, slip op. at 3-6 (2011); *Double Eagle Hotel &*

Casino, 341 NLRB at fn. 3 (“where discipline is imposed pursuant to an overbroad rule, that discipline is unlawful regardless of whether the conduct could have been prohibited by a lawful rule”). Because Hyson did not engage in concerted activity, an assessment of whether he engaged in conduct otherwise implicating concerns underlying Section 7 of the Act is discussed.

Since the Respondent’s no-wage discussion rule was facially invalid, it is not necessary “to demonstrate that it was illegally motivated, discriminatorily enforced, or even enforced at all.” *Long Island Association for AIDS Care, Inc.*, 364 NLRB 28 (2015), *enfd.* 870 F.3d 82, 2017. The *Double Eagle* rule states that discipline imposed pursuant to an unlawfully overbroad rule is unlawful. 341 NLRB at 112 fn. 3. Under the *Double Eagle* rule when an employee is discharged for violating an unlawful rule, “the conduct is protected, even if not concerted.” *Long Island Association for AIDS Care, Inc.*, 364 NLRB, *slip op.* at 25 (confidentiality statement preventing discussion of wages for which employer was discharged was unlawful).

In Hyson’s termination meeting, the Respondent accused him of complaining about company policies. Weary specifically mentioned the employee handbook provision that forbid employees from discussing wages with each other. Although Hyson explained that the rule was illegal, Weary reiterated that Hyson gave up the right to discuss wages. Hyson was immediately discharged. Since the confidentiality no-wage discussion statement for which Hyson was discharged was unlawful, it follows that his discharge was also unlawful. *Long Island Association for AIDS Care, Inc.*, 364 NLRB, *slip op.* at 25.

On the other hand, an employer can avoid liability for discipline based on an overbroad rule if it can establish that the employee’s conduct actually interfered with the employee’s work, that of other employees, or actually interfered with the its operations, and that the interference, rather than the violation of the rule, was the reason for the discipline. *Continental Group, Inc.*, 357 NLRB 409 (2011). The employer bears the burden of establishing this affirmative defense and showing that the employee’s interference with company was the actual reason for the discipline. *Continental Group, Inc.*, 357 NLRB, *slip op.* at 3-6 (balancing employer’s right employer’s right to maintain production and discipline with employee’s Section 7 rights).

The Respondent asserts that Hyson sought to be discharged and was discharged after one week of employment because he was late every day that week and stole the Respondent’s equipment. During Hyson’s termination meeting, the Respondent made a passing accusation that Hyson stole the missing cricut machine blade but, after Hyson denied the charge, discounted that as a secondary issue, simply calling him untrustworthy for not bringing it to her attention – even though the credible evidence established that he told his coworkers that he would take care of replacing the missing piece of equipment.

First, there is no evidence Hyson sought to be discharged. After accepting employment with Interns4Hire, Hyson was offered another temporary position and returned to work with the Respondent. Although Hyson expressed dissatisfaction with the Respondent’s travel policy, Stacey Walker did not recommend his discipline or discharge. On May 16, Hyson was chastised for using his smartphone at a training session held by Weary. Weary stated she did not consent to any recording, which would, in any event, be inadmissible in court. Hyson was discharged moments later at his meeting with the Weary, illuminating the fact that the proffered reason for discharge as pretextual and attributable to Hyson’s complaints regarding the Respondent’s no-

wage discussion rule.

The initial discussion of Hyson “complaining about company policies” immediately before discharge and Weary’s concession that she deliberately destroyed copies of the handbook after an attorney “advised [her] to destroy any documents,” are strong circumstantial evidence that he was discharged for not abiding with an unlawful policy. See generally, *Long Island Association for AIDS Care*, 364 NLRB No. 28, slip op. at 7 (2016) (discipline imposed on employee based on his disregard for unlawful no-wage discussion policy was also unlawful regardless as to whether his actions were concerted); see also *Parkview Lounge, LLC d/b/a Ascent Lounge*, 366 NLRB No. 71 slip op. at 10 (2018) (inconsistent or shifting reasons alleged for discharge two days after the concerted protected activity were mere pretext to mask unlawful motive). Hyson’s supervisor did not hear Hyson say that he was taking the extra blade to his worksite but was informed of his action by Hyson’s coworkers. Hyson told the other employees that he would take responsibility for the missing blade but did not inform his supervisor of the lost piece.

Finally, there was no credible evidence offered to support the contention that Hyson’s assertion of his Section 7 right to discuss wages interfered with operations. The uncorroborated hearsay testimony of Stacey Walker regarding alleged complaints by E’Amanda Walker and Fields about Hyson surfaced for the first time in the Respondent’s position statement and were inherently unreliable. See *Auto Workers Local 651 (General Motors)*, 331 NLRB 479, 481 (2000) (an employee’s uncorroborated testimony that a second employee told her that he heard a supervisor call her a “voodoo sister” was unreliable hearsay and did not support a finding that the supervisor was in fact hostile to her); *T.L.C. St. Petersburg*, 307 NLRB 605 (1992), affd. mem. 985 F.2d 579 (11th Cir. 1993) (judge properly accorded no weight, on the issue of the company’s good faith doubt of the union’s majority status, to the company president’s testimony concerning statements allegedly made by employees to an employee and a supervisor that they subsequently conveyed to him). Additionally, Weary interrupted training to admonish Hyson for using his smartphone, not because he was disrupting the session but because she was concerned that he might be recording her.

Under the circumstances, Hyson was discharged in violation of Section 8(a)(1) of the Act because he exercised his Section 7 rights by complaining about an unlawful rule prohibiting employees from discussing wages.

CONCLUSIONS OF LAW

1. SW Design School, LLC, d/b/a Interns4Hire.com, K-12 Coders, and SW Design School, L3C constitute a single integrated business comprise (the Respondent) and employer within the meaning of the Act.

2. The Respondent violated Section 8(a)(1) of the Act by: (1) maintaining a rule prohibiting employees from discussing their wages; and (2) enforcing that rule by telling employees on April 30, 2019 that Respondent’s rules prohibit employees from discussing their wages.

3. The Respondent violated Section 8(a)(1) of the Act by discharging Mathew Hyson on May

16, 2019 for engaging in protected activities.

4. The aforementioned unfair labor practices affected commerce within the meaning of Section 2(6) and (7) of the Act.

5. The Respondent has not otherwise violated the Act as alleged in the complaint.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³⁰

ORDER

The Respondent, SW Design School, LLC d/b/a Interns4Hire.com, SW Design School, LLC d/b/a K-12 Coders, and SW Design School, L3C, of Capitol Heights, MD and Washington, D.C., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining a rule prohibiting employees from discussing their wages or working conditions.

(b) Telling employees that the Respondent's rules prohibit employees from discussing their wages or working conditions.

(c) Discharging or otherwise discriminating against any employee for engaging in protected activities.

(d) Discharging or otherwise discriminating against any employee pursuant to unlawful rules.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of the Board's Order, offer Mathew Hyson full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

³⁰ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Make Mathew Hyson whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of the decision.

(c) Compensate Matthew Hyson for the adverse tax consequences, if any, of receiving a lump-sum backpay award.

(d) File a report with the Social Security Administrative allocating the backpay award to the appropriate calendar years.

(e) Submit a copy of the W-2 reflecting backpay paid to Hyson to the Regional Director.³¹

(f) Within 14 days from the date of the Board's Order, remove from its files any references to the unlawful discharge, and within 3 days thereafter notify Matthew Hyson in writing that this has been done and that the discharge will not be used against him in any way.

(g) Rescind the rule set forth above, if it has not already done so.

(h) Advise employees that the rule set forth above has been rescinded.

(i) Within 14 days after service by the Region, post at its facilities at 201 Ritchie Road, B-2, Capitol Heights, MD, and 833 Kennedy Street, N.W., Washington, D.C., copies of the attached notice marked "Appendix."³² Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed either of the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 30, 2019.

³¹ On April 24, 2020, the General Counsel moved to amend the complaint to include paragraph 12 alleging: "The General Counsel further seeks, as part of the remedy for the allegations in paragraph 9, that Respondent be required to submit the W-2 reflecting backpay paid to the discriminatee to the Regional Director." The unopposed motion, a technical update to the remedies sought by the General Counsel, is granted.

³² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(j) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

5

Dated, Washington, D.C. June 8, 2020



Michael A. Rosas
Administrative Law Judge

10

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

In recognition of these rights, we hereby notify employees that:

YOU HAVE THE RIGHT to discuss wages, hours, and working conditions with other employees, and **WE WILL NOT** do anything to interfere with your exercise of that right.

WE WILL NOT stop you from discussing wages and compensation with employees and **WE WILL** rescind the rules we maintain on the subject if we have not already done so.

WE WILL NOT fire you or otherwise discriminate against you because you exercise your right to discuss wages, hours, and working conditions with other employees.

WE WILL NOT fire you or otherwise discipline you pursuant to an unlawful rule.

WE WILL offer Matthew Hyson his job back, along with seniority and all other rights or privileges he previously enjoyed.

WE WILL pay Matthew Hyson for the wages and other benefits he lost because we fired him.

WE WILL compensate Matthew Hyson for the adverse tax consequences, if any, of receiving a lump-sum backpay award.

WE WILL file a report with the Social Security Administrative allocating the backpay award to the appropriate calendar year(s).

WE WILL remove from our files all references to the discharge of Matthew Hyson, and **WE WILL** notify him in writing that this has been done and that the discharge will not be used again him in any way.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

**SW Design School, LLC d/b/a Interns4Hire.com,
SW Design School, LLC d/b/a K-12 Coders, and
SW Design School, L3C, a single-integrated
business enterprise and/or employer**

(Employer)

Dated _____ **By** _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov

Bank of America, Tower II, 100 S. Charles Street, Suite 600,
Baltimore, MD 21201-2700 (410) 962-2822, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/05-CA-243576 by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE
DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY
ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR
COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE
REGIONAL OFFICE'S COMPLIANCE OFFICER (410) 962-2880.